

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CYNTHIA L. DURKEE)	CV 08-06254-PA(CT)
)	
Plaintiff,)	ORDER ACCEPTING
)	MAGISTRATE JUDGE'S
v.)	REPORT AND RECOMMENDATION
)	
MICHAEL ASTRUE,)	
Commissioner of Social)	
Security,)	
)	
Defendant)	
_____)	

Pursuant to 28 U.S.C. § 636, the court has reviewed the entire file de novo, including the magistrate judge's report and recommendation. The court agrees with the conclusions of the magistrate judge.

Below, plaintiff contended she is unable to work primarily due to disabling pain from rheumatoid arthritis (see Transcript of Record, "TR", 50, 383-90), though here she does not dispute the ALJ's finding that this disease is now controlled by medication. (TR 20.) Here, the gravamen of her plea is that the ALJ did not adequately account for the number of times she must use the bathroom daily. However, his residual functional capacity ("RFC") limitation specifically provided for ready access to bathrooms. (TR 22.)

Even this limitation was generous in view of the RFC assessments of a consultative examining and reviewing physician, which included no such

1 limitation. (TR 20, 151-56, 143-50.) Indeed, the ALJ found plaintiff's
2 claims about the extent of her limitations was not credible, noting:
3 "[plaintiff] has not been hospitalized, treated at an emergency room,
4 undergone extensive medical workups, or received restorative therapy."
5 (TR 21.)

6 To the extent plaintiff now contends the ALJ should have asked her
7 specifically how many times a day she needs to use the restroom, the
8 court disagrees. The ALJ was not required to augment plaintiff's
9 testimony about topics he discounted as not credible, particularly when
10 plaintiff's counsel was provided and effectively declined the
11 opportunity to do so.

12 Furthermore, the record suggests a history of alcohol abuse, which
13 further diminishes plaintiff's allegations of disability due to
14 diarrhea. (See, e.g., TR 155)

15 Accordingly, IT IS ORDERED:

- 16 1. The report and recommendation is accepted.
17 2. Judgment shall be entered consistent with this order.
18 3. The clerk shall serve this order and the judgment on all
19 counsel or parties of record.

20 DATED: April 6, 2009



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22 PERCY ANDERSON
23 UNITED STATES DISTRICT JUDGE
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